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August 21, 1992

Honorable Alfred C. Sikes, Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Florida Cellular Mobil Communications Corporation
File No. 10854-CL-P-468-A-89

Dear Mr. Chairman:

This is in response to an unauthorized pleading in letter form addressed to you on August 18, 1992 by counsel to Wendy C. Coleman d/b/a WCC Cellular ("WCC") concerning a petition for reconsideration filed by my client,

Florida Cellular Mobil Communications Corporation ("Florida Cellular"). WCC is not a party to the reconsideration proceedings now before the Commission and has not voiced any objection to Florida Cellular's application at any time in the past, despite numerous opportunities. On April 8, 1992, the Commission held a new lottery to pick an alternate selectee for the Maryland 2 market, subject to Florida Cellular's disqualification. WCC was selected in this re-lottery, and WCC now stands to benefit by attempting to create uncertainty as to the merits of Florida Cellular's position. The Commission should not allow WCC's unauthorized filing to influence its consideration of the pending petition for reconsideration not only because of its untimely nature but also because WCC's allegations are without merit.

Florida Cellular's pending petition for reconsideration concerns the dismissal of its application for a cellular construction permit for a Rural Service Area known as "Maryland 2", comprising southern Maryland and the Eastern Shore. The dismissal resulted from Florida Cellular's disclosing and seeking to cure an apparent cross-ownership rule violation by an 0.85% shareholder. That shareholder, who was unaware that Florida Cellular was filing for the Maryland 2 market, had, unbeknownst to Florida Cellular, become a 5% partner in another applicant for the Maryland 2 market. When Florida Cellular discovered that the shareholder had unknowingly appeared to transgress the rule

against interests in multiple applications, it disclosed the facts to the FCC and sought a waiver to repurchase his shares and eliminate any rule violation.

WCC's Letter Pleading

In its unauthorized, untimely letter pleading, WCC has suggested that Florida Cellular may have been party to additional cross-ownership rule violations, based on allegations made in a petition to deny filed in a proceeding not involving Florida Cellular. Specifically, WCC submitted a copy of a petition to deny the application of Marco Communications Corp. ("Marco") for the "Oregon 6" market by Silver Wings 1988 L.P., in which it is alleged that certain persons may hold prohibited interests in both Marco and Florida Cellular.

Marco has not yet filed its response to the Silver Wings petition or to another similar petition that was filed against it; Marco's response is due on August 28, 1992. Florida Cellular has supplied extensive information regarding its own ownership to Marco for use in preparing its formal response, which will include extensive documentation demonstrating the lack of any common shareholders among Marco and Florida Cellular. In short, Marco's formal response will amply demonstrate that the facts simply do not bear out the accusations made in the Silver Wings petition.

Florida Cellular had planned to allow the formal Marco response to the petition to speak for itself. However, WCC's unauthorized letter pleading has raised the possibility that the factually incorrect accusations made in the Silver Wings petition may delay or otherwise prejudice the Commission's consideration of Florida Cellular's reconsideration petition. For that reason, Florida Cellular finds it necessary to set the facts straight.

The Facts

Marco was organized in 1983; it was initially founded for the purpose of filing a cellular application for one cellular service area: Naples, Florida. Some Marco shareholders and other investors then organized Florida Cellular, initially to act as a construction agent for the Marco system if it won a license. Not long afterward, Florida Cellular decided to file seven MSA cellular applications. While the seven applications were never filed, both Florida Cellular and Marco later filed a number of MSA cellular applications. Any common ownership between the two companies was below the 1% threshold the FCC permitted in the case of MSA applicants.

In 1987, Florida Cellular and Marco reached a settlement of a dispute with the FCC law firm that had been their application preparer. The settlement called for the preparation of 125 RSA cellular applications for each

company for filing under the rules that were then in the process of being finalized. In May 1988 the FCC released several orders in the rural cellular rulemaking docket, finalizing the rules governing RSA applications, and established the initial RSA filing dates, which were to begin July 13, 1988. Among the rules adopted in May 1988 was a rule prohibiting *any* cross-ownership among competing applicants. Counsel advised the companies that ownership changes would be needed to comply with the new rules against cross-ownership below the former 1% threshold.

Based on this advice, in June of 1988, there were various changes in the ownership of the two companies, as the result of which any common ownership between the companies was eliminated a month before the RSA cellular filings were scheduled to begin. Unfortunately, when their applications were filed with the FCC, obsolete ownership information was included, rather than the corrected ownership data that had been prepared, which would have reflected the pre-filing ownership realignment that occurred because of the FCC's ownership rule revision.

After Florida Cellular's application was selected in the lottery for Maryland 2, the company's corporate counsel supplied its new FCC counsel with a corrected shareholder list for a determination whether the changes needed to be filed with the FCC. Copies of this correspondence, including the corrected shareholder list, are appended as Attachment 1.

Florida Cellular's FCC counsel contacted the Commission staff to determine what information had to be filed concerning Florida Cellular's ownership in an amendment to its application. Based on the staff's advice, and consistent with the provisions of Section 22.13(a)(1)(iii) of the rules, which requires the disclosure of only those shareholders holding 5% or more of a class of stock, an amendment was prepared that included a revised ownership exhibit listing only the two shareholders holding 5% or greater interests. The transmittal letter accompanying the amendment indicated that the original ownership exhibit had been unnecessarily detailed and acknowledged that the listing contained inaccuracies. The transmittal letter stated that Florida Cellular was willing to supply a list of the shareholders holding interests below 5% if needed. A copy of the amendment and transmittal letter is appended as Attachment 2.

On several occasions in the litigation concerning Florida Cellular's application, Florida Cellular has reiterated that its originally-filed ownership exhibit contained errors and inaccuracies. *See* April 24, 1990 Request for Waiver of Section 22.922, at 2 n.3; May 24, 1990 Opposition to Petition to Dismiss or Deny of JAJ Cellular Partnership, at 7-9.

The WCC/Silver Wings Allegations Are Without Merit

The Silver Wings petition and the WCC letter ignored the fact that Florida Cellular has repeatedly stated that the shareholder list in its original application was incorrect. Based on the erroneous ownership stated in the original Florida Cellular application, Silver Wings and WCC assert that Susan Finn, a Marco shareholder, is also the owner of shares in Florida Cellular, jointly with Richard Finn. In fact, Susan Finn has not been an owner of any interest in Florida Cellular since before the RSA applications were filed. The corporate records of Florida Cellular reflect that on June 3, 1988, Richard and Susan Finn requested the company's attorney to transfer their 2500 shares to Richard Finn alone. This was accomplished and a new stock certificate was issued in Richard Finn's name on June 11, 1988; he acknowledged receipt of the new certificate on June 15, 1988. Thus, Susan Finn was never an owner of Florida Cellular at any time during the pendency of the Maryland 2 application, which was filed during the December 14-16, 1988 filing window. Copies of the relevant corporate records are appended as Attachment 3.

Silver Wings and WCC also point to the fact that John Finn, Donald Finn, and Richard Finn were originally listed as shareholders in both Florida Cellular and Marco, based on the ownership lists contained in the two companies' applications. These individuals are in fact shareholders in

Florida Cellular, according to corporate records. They are not now Marco shareholders and have not been at any time since June of 1988 -- before the applications were filed. That fact is reflected in Marco's May 7, 1992 amendment. We have been advised by Marco officials and corporate counsel that the corporate records of Marco reflect the fact that these individuals ceased being shareholders in that company prior to any RSA application filings, and it is our understanding that the Marco response to the Silver Wings petition will provide appropriate documentation.

In sum, the allegations of previously undisclosed cross-ownership between Florida Cellular and Marco are based solely on the erroneous ownership lists included in the two companies' applications and are contrary to the facts. The corporate records of the two companies reflect that during June of 1988 all previously existing commonality of ownership between the two companies was eliminated. There is nothing suspicious about the fact that a number of ownership changes occurred at that time. Under the rules applying to MSA cellular filings, interests in multiple applications by shareholders owning less than 1% were permitted. The ownership changes took place in direct response to the FCC's May 18 promulgation of a rule prohibiting such common ownership for the RSA applications that were to be filed starting in July 1988. The "facts" of which WCC seeks official notice are not facts at all, and they provide no basis for rejecting Florida Cellular's pending

petition for reconsideration.

WCC's Waiver Request Should Be Denied

Finally, we note that WCC has, in a footnote to its letter pleading, sought a waiver of the rules to permit it to file microfiche copies of its filing at a later date. It has given no reason why the rule requiring filings to be made in microfiche form should be waived, and it is difficult to imagine why a waiver would be justified. WCC has not alleged any need for urgency in making its filing, and indeed there is no urgency: its letter is an unauthorized pleading by a non-party made without regard to deadlines and many months after the time for opposing reconsideration expired. Moreover, it was filed ten days before Marco's response to the petition is due to be filed. If WCC waited until Marco's response was filed, there would be no basis for making its filing at all. The timing of the filing suggests that WCC's motivation is less to bring relevant facts to the Commission's attention than to interfere with the Commission's timely consideration of the pending petition for reconsideration. Accordingly, Florida Cellular opposes the request for waiver of the microfiche requirement contained in Section 22.6 of the Rules.

Conclusion

WCC and the Silver Wings petition on which it relies have alleged that there was prohibited common ownership

between Marco and Florida Cellular; these allegations are demonstrably incorrect: Since before their RSA applications were filed, the ownership of Marco and Florida Cellular has been entirely separate. The Commission should not permit WCC's untimely, unauthorized letter pleading to delay or otherwise affect its consideration of Florida Cellular's petition for reconsideration.

Sincerely,

WILKINSON, BARKER, KNAUER & QUINN

By: /s/ Michael Deuel Sullivan

Counsel to Florida Cellular Mobil Communications Corporation

Enclosures

cc: Hon. James H. Quello
Hon. Sherrie P. Marshall
Hon. Andrew C. Barrett
Hon. Ervin S. Duggan
Donna R. Searcy, Secretary (w/microfiche copies)
John Cimko, Chief, Mobile Services Division
Jerome K. Blask, Esquire
James F. Ireland, Esquire
Paul C. Besozzi, Esquire
A. Thomas Carroccio, Esquire

Attachment 1 - Omitted

December 1989 Correspondence Forwarding Corrected Shareholder List for Florida Cellular Mobil Communications Corporation to FCC Counsel

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Attachment 2 - Omitted

Florida Cellular's Amendment to its Ownership Exhibit

Attachment 3 - Omitted

Corporate Records of Florida Cellular Mobil Communications Corporation Concerning Stock Held By Richard and Susan Finn